IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.GIRI

WEDNESDAY, THE 8TH AUGUST 2007 / 17TH SRAVANA 1929

WP(C).No. 24223 of 2007(H)

OS.476/1959 of MUNI-MAGI.COURT, PERAMBARA

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PETITIONER:

SASIDHARAN,
S/O.SANKARAN NAIR, KAITHAVIL HOUSE,
MENHANIAM P.O., PERAMBRA, KOYILANDY TALUK.

BY ADV. SRI.T.G.RAJENDRAN

RESPONDENTS:

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1. KUNHI AYISSA, CHANGAROTH HOUSE,
CHERUVALOOR DESOM, CHENOLI P.O., KOYILANDY TALUK.

2. IMBICHI MAMMU, THYKANDI HOUSE,
MENHANIAM P.O., KOYILANDY TALUK.

3. KUNHAVI, THYKANDI HOUSE,
MENHANIAM PO, KOYILANDY TALUK.

4. KUNHAMMOTTI, PORAYIL HOUSE,
MENHANIAM P.O., KOYILANDY TALUK.

5. KUNHI SOOPPY, PORAYIL HOUSE,
MENHANIAM P.O., KOYILANDY TALUK.

6. NAFEESA, KOROTH HOUSE,
ARIKKULAM P.O., KOYILANDY TALUK.

BY

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 08/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

V.GIRI,J.

W.P.(C)24223 of 2007

Dated this the 8th day of August, 2007

JUDGMENT

The petitioner who is the respondent in E.P.82/2006 in I.A.119/1975 in O.S.476/1959 on the file of the Munsiff Court, Perambra challenges the order passed by the learned Munsiff in Ext.P1 on 28.9.2006 and all consequential proceedings including Ext.P2. E.P.82/2006 was filed inter alia seeking delivery of the property in execution of the final decree for partition. The petitioner was declared ex-parte in the execution proceedings and on 29.8.2006, the learned Munsiff ordered delivery of the scheduled properties. A perusal of Ext.P1 order would show that on 28.9.2006, delivery was recorded and E.P. was closed. The petitioner would challenge the proceedings taken by the learned Munsiff in execution, in particular, the delivery of the property from his possession, on the ground that no enquiry was conducted by the court below prior to the delivery of the property. The petitioner contends that the court below proceeded to effect delivery of the property and record satisfaction of the E.P. without such enquiry.

2. In my view, the writ petition is misconceived. A perusal of

Ext.P1 would show that delivery was ordered as early as on 29.8.2006 and actually delivery was recorded on 28.9.2006. E.P. itself was closed on the same day. The petitioner has no case that the delivery has not been effected.

3. There is no explanation what so ever for the long delay of more than one year in challenging Ext.P1 order assuming for a moment that there are grounds to challenge Ext.P1 order. Apart from the same, the Execution Court had proceeded to effect delivery of the property in execution of the decree. No objection is seen to have been preferred by the petitioner in the execution petition. The petitioner does not have a case that he did not receive notice in the execution petition. The petitioner did not take any steps to get the order setting him ex-parte reviewed. No steps were taken by the petitioner to resist the prayers made in the execution petition. The proceedings taken by the court below cannot be faulted with.

4. For all these reasons, I find no grounds to interfere with Ext.P1 order. The writ petition lack merits and the same is dismissed.

V.GIRI, JUDGE

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